

### **REMARKS/ARGUMENTS**

The undersigned greatly appreciates the courtesies extended by Examiners Arthur Duran and James Myhre during the second interview with the applicant, Mr. Ken Wyker, at the Patent and Trademark Office on July 29, 2004. During the interview, Applicant further distinguished the present invention from the cited art in several hypothetical examples presented to the examiners. Each of the examples illustrated the "promotions cost" of the manufacturer in its efforts to incent select groups of consumers. The examiners suggested a further amendment to the claims in order to clarify that manufacturer price discounts are being offered to select groups of consumers at *individual retail stores* based on the store's promotion period.

Claims 1-41 in the case are pending. Claims 1-5, 7-21, 23-31, and 33-41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Deaton ('322) in view of Kepecs ('543). Claims 6, 22, and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Deaton ('322) in view of Kepecs ('543), and further in view of Barnett ('208).

As discussed during the interview, the present invention affords the manufacturer the ability to *maximize the impact* of its promotions to targeted consumers at individual retail stores with a *minimum promotions cost* (to the manufacturer). This concept is achieved by coordinating manufacturer price discounts with promotion periods at retail stores. In other words, if the manufacturer wants to offer a select consumer group a certain item for a net sales price of \$1.00, it could choose to do so only during a period when the item is discounted to \$1.50 or less at an individual retail store. In this case, the promotions cost to manufacturer is \$.50 or less. If this is the maximum cost the manufacturer is willing to spend for the promotion, then no manufacturer discount would be provided at all other individual retail stores offering the item for more than \$1.50.

Prior to the invention, no other method had achieved or even suggested this type of coordination or promotion "synergy" between the manufacturer and the retailer. Because the manufacturer cannot dictate ultimate retail sales prices, its promotions costs to reach a targeted net price are unpredictable and often uncontrollable. According to the present invention, by conditioning its discounts based on predetermined retail pricing criteria, the manufacturer can effectively control and manipulate its promotions costs to achieve a maximum effective result.

During the interview, the examiner noted the following discussion in Kepecs:

The DAP computer 11 may also communicate with systems at manufacturers or other discounters 31 [manufacturers or retailers] to obtain additional information on available promotions and to offer the manufacturer the opportunity to take advantage of promotional opportunities developed by the DAP.  
Col. 7, Ins. 26-31.

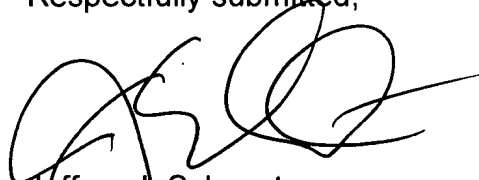
Kepecs explains the meaning of this concept (*offering the manufacturer the opportunity to take advantage of promotions developed by the DAP*) in the example provided at column 7, lines 35-42. By determining and communicating to the manufacturer the relative performance level of the promotion, the DAP computer provides the manufacturer an opportunity to take advantage of a successful promotion—albeit, at a higher cost to the manufacturer. In other words, in the quoted discussion above, the "additional information" obtained by the DAP relates to various manufacturer/discounter promotions and data regarding the relative success of the available promotions. If the DAP determines that a particular promotion is performing well for a manufacturer, then the manufacturer may choose to continue the promotion at an increased cost. If the DAP determines that a promotion is unsuccessful, then the manufacturer would presumably discontinue the promotion.

This concept discussed in Kepecs is unrelated to the present concept of coordinating manufacturer price discounts for select consumer groups based on retail price

reductions at individual retail stores. The Office Action correctly states that Deaton does not disclose setting price discounts based upon the interaction of promotions between the manufacturer and retailer.

For all these reasons discussed above, Applicant submits that all of the claims in the case are now in condition for allowance. Such action is therefore respectfully requested at an early date. If the Examiner believes that issues remain for discussion, he is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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